

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
v.) Criminal No. 04-10051-PBS
)
)
JORGE ROSARIO)

PRELIMINARY RESPONSE TO DEFENDANT'S MOTION FOR MODIFICATION OF
SENTENCE PURSUANT TO 18 U.S.C. §3582(C)(2)

The government is in receipt of the defendant's Motion for Modification of Sentence. In preliminary response to this motion, the government notes the following two points:

(A) as the defendant himself recognizes, Amendment 706 (as amended by Amendment 711) to the Sentencing Guidelines will not become eligible for retroactive application under 18 U.S.C. §3582(c)(2) and U.S.S.G. §1B1.10 until at least March 3, 2008 assuming that there is no Congressional action on this Amendment;

(B) the defendant also pled guilty to three drug offenses, each of which involved more than 5 grams of cocaine base and was therefore subject to the five-year mandatory minimum sentence set forth in 21 U.S.C. §841(b)(1). Therefore, irrespective of any other issues that may arise in connection with this motion, the defendant is not eligible for any reduction below 60 months as a matter of law.

The government does not mean to suggest by this preliminary response that the defendant is entitled to any modification to

his sentence or that the motion will not raise other issues regarding, among other things, the eligibility of the defendant for any such reduction or the appropriateness of any reduction assuming that the defendant is ultimately determined to be eligible at such time as the Amendment becomes effective (if that in fact occurs). The government therefore reserves the right to file additional responsive materials to this Motion prior to any hearing that may be conducted on or after March 3, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, JOHN A WORTMANN, JR., Assistant U.S. Attorney, do hereby certify that I have this 8th day of February, 2004, served the copy of the foregoing by mail to Jorge Rosario, pro se, No. 25115-038, FCI Memphis, PO Box 34550, Memphis, TN 38184-0550.

/s/ John A. Wortmann, Jr.
JOHN A. WORTMANN, JR.
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